

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Bail Appl..No. 6760 of 2007()

CP.40/2007 of J.M.F.C.-II, ALUVA
CRIME NO.524 OF 2005 OF ANGAMALY POLICE STATION
.....

PETITIONER : 2ND ACCUSED:

BENNY, AGED 40, S/O.YACOB,
INJAKKA VEETIL, PONNAMPARAMBIL,
MEKKAD, NEDUMBASSERY.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS: COMPLAINANT:

STAT OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.6760 of 2007

Dated this the 6th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found to transport spirit in 124 cases having a capacity of 35 litres each in a tanker lorry. The petitioner is arrayed as the 2nd accused. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings has been registered. The petitioner has not been arrested at the crime stage. The petitioner has received summons from the learned Magistrate to appear before the court in the committal proceedings.

2. According to the petitioner, he is absolutely innocent. His absence was not wilful or deliberate. He is willing to appear before the learned Magistrate and seek regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He also apprehends that his application for bail may not be considered in the light of the decisions in **Sukumari v. State of Kerala** [2001(1) K.L.T 22] and **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339]. I must certainly note that the allegations raised are very serious and grave.

4. This bail application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

5. Needless to say that the petitioner's application for regular bail shall be considered by the learned Magistrate in the light of the decisions in **Sukumari v. State of Kerala** [2001(1) K.L.T 22].

(R.BASANT, JUDGE)

rtr/-

